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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/781,137 | 02/18/2004 | Floyd Backes | 160-025 | 3361 |

34845 7590 03/28/2006

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EXAMINER

BEAMER, TEMICA M

| | |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2617

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,137

Applicant(s)

BACKES ET AL.

Examiner

Temica M. Beamer

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/5/2006 have been fully considered but they are not persuasive.

Applicant argues that Almgren, taken alone and/or in combination with Dent fails to disclose an access point setting its own power level based on nearby access points operating on the same channel.

However, the above limitations are not claimed. The invention as presently claimed only requires that logic detects that one or more access points are using the same radio frequency and making adjustments to the transmit power to decrease interference. Almgren discloses that base stations are determined to be using the same channel as evidenced by interference in call connections (col. 1, lines 13-22). Almgren further discloses regulating power in order to reduce the interference (col. 4, lines 21-39).

Therefore, Almgren, taken alone and/or in combination with Dent meets the limitation requirements as presently claimed and the rejection stands as set forth below.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/781,191. Although the conflicting claims are not identical, they are not patentably distinct from each other because both inventions are drawn to a system a program product comprising logic for detecting a device also using the same radio frequency channel and logic for detecting adjusting transmit power.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Almgren et al (Almgren), U.S. Patent No. 5,574,982.

Regarding claim 1, Almgren discloses a program product for an access point capable of communicating in a wireless communications network via a radio frequency channel, the program product comprising a computer readable medium having embodied therein a computer program for storing data, the computer program comprising: logic for detecting that one or more other access points are also using the radio frequency channel; logic responsive to the logic for detecting for adjusting transmit power (col. 1, lines 13-22, col. 4, lines 24-39).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almgren in view of Dent, U.S. Patent No. 5,345,598.

Regarding claim 2, Almgren discloses the program product of claim 1 as described above. And further discloses wherein the logic for detecting further comprises: logic for receiving messages from the one or more other access points (col. 5, lines 18-38).

Almgren, however, fails to disclose; logic for maintaining a table including indications of the power levels of the respective one or more other access points; and wherein the logic for adjusting transmit power does so in response to the indications in the table.

In a similar field of endeavor, Dent discloses duplex power control system in a communications network. Dent further discloses logic for maintaining a table including indications of the power levels of the respective one or more other access points; and wherein the logic for adjusting transmit power does so in response to the indications in the table (col. 7, line 56-col. 8, line 2).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to modify Almgren with the teachings of Dent in order to provide quick reference to power information.

Regarding claim 3, the combination of Almgren and Dent discloses the program product of claim 2 further comprising: logic for transmitting a power backoff level to other wireless devices in the network, the power backoff level indicative of the amount by which the access point's transmit power has been adjusted (Almgren, col. 5, lines 18-38).

Regarding claim 4, the combination of Almgren and Dent discloses the program product of claim 3 as described above. The combination, however, fails to disclose wherein the wireless communications network is an 802.11 wireless network.

The examiner contends, however, that the 802.11 wireless network is well known in the art and the examiner takes official notice as such.

Therefore, at the time of invention, it would have been obvious to a person of ordinary skill in the art to modify the combination of Almgren and Dent since such the 802.11 network is widely used in cellular communications systems.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Temica M. Beamer whose telephone number is (571)

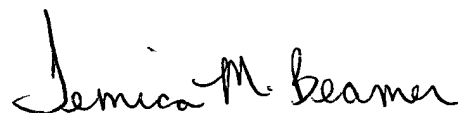
Art Unit: 2681

272-7797. The examiner can normally be reached on Monday-Thursday (alternate Fridays) 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tmb



TEMICA BEAMER
PRIMARY EXAMINER

3/20/06